Supreme Court, U.S.
FILED
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No.

IN THE

Supreme Court of the United States

David M. Sinnott - PETITIONER
Tammy K. Sinnott - PETITIONER

v.

State of North Carolina- RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI
To The North Carolina Supreme Court
From Case No. 02CRS 9153 - 60

PETITION FOR WRIT OF CERTIORARI

David M. Sinnott "Pro-Se"
Tammy K. Sinnott "Pro-Se"
2 Surry Circle South
Pinehurst, N.C. 28374
Telephone: (919) 386-1045

QUESTIONS PRESENTED

I. Did the trial court deprive the Petitioners' rights to freedom, liberty, and property as punishment for evasion of income tax not dutifully owed in violation of established U.S. Supreme Court decisions of the Sixteenth Amendment, and petitioners acted in good faith on these decisions, and not willfully.

II. Is the decision of the North Carolina Court of Appeals, that compensation for labor is income, within the meaning of income of the Sixteenth Amendment?

III. Did the trial court obstruct the Petitioners' right to a fair trial by jury before an impartial court when it allowed only evidence prejudicial against the defendants by selectively excluding relevant and admissible evidence and testimony essential to the defense?

IV. Did the trial court deny the Petitioners' fundamental rights of liberty by imprisoning them for failure to file State income tax returns without proving that the petitioners were liable for State taxes under the law according to due process?

V. Where the Petitioners' deprived of their rights to liberty and property by the State trial court for purportedly violating tax law that is so general and vague as to be unconstitutional?

LIST OF PARTIES

Petitioners

David M. Sinnott
Tammy K. Sinnott
2 Surry Circle S.
Pinehurst, N.C. 28374

Repondents

State of North Carolina
(by)
Assitant Attorney General
Rudy Renfer
P.O. Box 629
Raleigh, NC 27602-0629

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully prays that a writ of certiorari be issued to review the judgment below.

OPINIONS BELOW

The opinion of the N.C. Supreme Court appears at Appendix A to the petition and reported at 358 N.C. 738, 602 S.E. 2d 678

The opinion of the N.C. Court of Appeals appears at appendix B to the petition and is reported at N.C App. 593 S.E. 2d 439.

JURISDICTION

The date on which the highest state court decided this case was August 12, 2004 by the Supreme Court of North Carolina . A copy of that decision appears at Appendix A.

The jurisdiction of this court is invoked under 28 U.S.C.§1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

United States Constitution
Article I
Section 9
Restrictions On Federal Power

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

Amendment XIV
Nationalizing The Bill Of Rights
Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Amendment XVI
Income Tax

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

ARTICLE I
Section 9 Restrictions

No capitation or other direct, tax shall be laid, unless in proportion to the Census or Enumeration herein before directed to be taken.

North Carolina Constitution

Section 1 The equality and rights of persons.

We hold it to be self evident that all persons are created equal; that they are endowed by their creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

Article V. Finance

Section 1. No capitation tax to be levied.

No poll or capitation tax shall be levied by the General Assembly, or by any county, city or town, or other taxing unit.

STATEMENT OF THE CASE

Petitioners were arrested and charged with willfully attempting to evade or defeat a tax, and willful failure to file. When brought to court petitioners filed a motion for continuance, so that they may prepare for trial, which was granted. The Assistant Attorney General reset the date for two weeks later.

Petitioners again filed a motion to continue on the Sixth Amendment right to the best defense. This was denied and the judge cited the Sixth Amendment right to a speedy trial.

Petitioners were accused, arrested, and convicted in a three-month period of time. North Carolina defines a speedy trial as anything less than a year.

Petitioners filed a motion to dismiss based on Constitutional grounds, both N.C. Constitution and the U.S. Constitution. The judge thumbed through them and then denied the motion.

Having no idea how to proceed at trial petitioners were instructed by the judge. After prosecution's questioning was finished, petitioners attempted to ask questions of the witness. Petitioner's questions into direct and indirect taxes were denied, as were numerous other questions.

The judge told us that the jury was a trier of facts not law, and the judge determined what the law was and was not.

During a recess petitioners asked the judge how they were to present their Certified U.S. Supreme Court cases into evidence. The judge told the petitioners that they could not be presented as evidence because the defendants were not attorneys and could not possibly understand what the cases were about.

The prosecution, during testimony, read parts of a letter written to the Governor of North Carolina at the time.

The parts read by prosecution were read out of context and never presented to the jury for examination.

Petitioners presented the reliance letter of an enrolled agent as evidence, the judge read the first sentence and denied it.

All relevant testimony and evidence the defendants had in their defense was denied. Petitioner Tammy Sinnott rested her case, then the judge asked petitioner David Sinnott if he had any further evidence. David Sinnott intended to call Petitioner Tammy Sinnott to the stand, but the judge asked him if he had any further evidence to present. When he replied no, the judge rested his case for him and thereby denying him the right to raise questions to the witness.

Petitioners relied in good faith on prior decision of the U.S. Supreme Court and a reliance letter from Enrolled Agent to form their opinion, none of which was allowed in their defense.

REASONS FOR GRANTING THE PETITION

Petitioners relied on the decisions of this court in making the determination that they were not liable to file, that they did not make income under the Sixteenth Amendment as defined by this court, and that the right to the fruits of ones labor, and the right to work were not taxable without apportionment.

In the matter of the 16th Amendment this court has said:

Peck v Lowe, 247 U.S. 165

"The Sixteenth Amendment does not extend the power of taxation to new or excepted subjects...,"
"Neither can the tax be sustained on the person, measured by income. Such a tax would be, by nature, a capitation rather than an excise. "

Stanton v Baltic Mining Co., 240 U.S.103

"The Sixteenth Amendment conferred no new power of taxation..."

Brushaber v.Union P. R. C0., 240 U.S. 1

The Amendment authorizes only a particular character of direct tax without apportionment, and therefore if a tax is levied under its assumed authority which does not partake of the characteristics exacted by the Amendment, it is outside of the Amendment and is void as a direct tax in the general constitutional sense because not apportioned. (b)As the Amendment authorizes a tax only upon incomes "from whatever source derived," the exclusion from taxation of some income of designated persons and classes is not authorized and hence the constitutionality of the law must be tested by the general provisions of the

Constitution as to taxation, and thus again the tax is void for want of apportionment....
"The confusion arises from his conclusion that the that the Sixteenth Amendment provides for a hitherto unknown power of taxation, that is, a power to levy an income tax, which although direct, should not be subject to the regulation of apportionment.

Eisner v. Macomber 252 U.S. 189 (1919)
"The Sixteenth Amendment must be construed in connection with the taxing clauses of the original Constitution and the effect attributed to them before the Amendment was adopted.

In the matter of the willfulness this court has said:

U.S. v Bishop 412 U.S. 346 at 361
"The requirement of an offense committed willfully is not met, therefore, if a taxpayer has relied in good faith upon a prior decision of this Court."

In the matter of direct versus indirect taxes this court has said in:

Peck v Lowe, 247 US. 165
"Direct Taxes bear immediately upon persons, upon possessions and enjoyment of a right. Indirect taxes are levied on the happening of an event or an exchange."

In the matter of taxation of rights this court has said:

Gregory v. Helvering 293 U.S. 465
The legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means which the law permits, cannot be doubted.

Murdock v. Pennsylvania 397 U.S. 105
"The State may not impose a charge for the enjoyment of a right granted by the Federal Constitution."

Spreckles Sugar Ref. Co. v McClain 192 U.S. 397
"Keeping in mind the well-settled rule that the citizen is exempt from taxation unless the same is imposed by clear and unequivocal language, and that where the construction of the tax law is doubtful, the doubt is to be resolved in favor of those upon whom the tax is sought to be laid."

The Fourteenth Amendment secures the right to due process of law.

Petitioners have a right to ask what laws make them liable, the definition of income, and the state has the obligation to provide that information. However, the state has remained silent, not only on the laws, but also in acknowledging the cases of this court that have been presented to them repeatedly.

How can any person find protection in the decisions of this court if other courts can merely toss them aside and not answer to their decisions?

The effect of the government's actions has been noted by this Court:

U.S. v. Minker, 350 US. 179, at 187.
"Because of what appears to be a lawful command on the surface, many citizens, because of their respect for what only appears to be law, are cunningly coerced into waving their rights due to ignorance."

That we believe that compensation for labor is not income under the laws and constitution does not make us against taxation completely and thereby tax protesters.

MR. Justice Holmes has said "The Power To Tax Is Not The Power The Destroy While This Court Sits."

Is this no longer true?

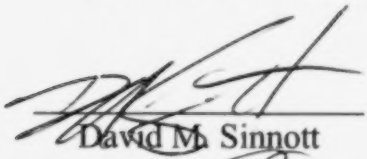
The North Carolina Court of Appeals raises the case of Lonsdale v. Commissioner, 661 F 2d.71 (5th cir. 1981). The decision in this case is in direct opposition to the decision of this court. The conclusion by the North Carolina Court of Appeals, that all "accessions to wealth." is taxable, based on the case Commissioner v. Glenshaw Glass Co., 348 U.S. 426, is not relevant to individual income.

Commissioner v. Glenshaw Glass Co., is a case involving a corporation. As such, the corporation is a creation of the state and a subject of taxation. The individual and the corporation can't be held to the same taxation as the individual has rights, but the corporation has privileges.

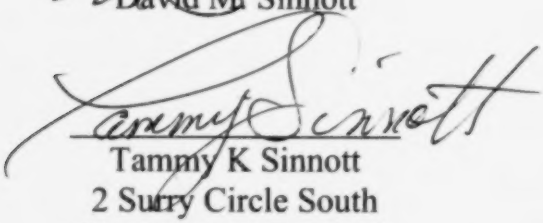
CONCLUSION

It would be just of the Court to grant a petition for a writ of certiorari in the interest of justice - not only for the petitioners, but for all who will follow the decisions of this court in the future believing that they are right to do so.

Respectfully submitted,



David M. Sinnott



Tammy K Sinnott
2 Surry Circle South
Pinehurst, N.C. 28374

November 23, 2004

Sworn to and subscribed before me
this the 23rd day of November 2003.

_____
Notary Public
My commission expires:

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APPENDIX A

OPINION OF THE NORTH CAROLINA SUPREME COURT
358 N.C. 738, 602 S.E. 2d 678

358 N.C. 738, 602 S.E. 2d 678

Supreme Court of North Carolina

STATE of North Carolina

v.

Tammy kay SINNOTT and David Michael SINNOTT.

No. 159A04

Aug.12, 2004

Tammy K.SINNOTT, Pro Se.

David M. SINNOTT, Pro Se.

Michael D. Youth, Assistant Attorney General, C. Colon Willoughby, Jr., District Attorney for the State.

Prior report –N.C. App. ——593 S.E. 2d 439

ORDER

Upon consideration of the notice of appeal from the North Carolina Court of Appeals, filed by the defendants on the 1st day of April 2004 in this matter pursuant to G.S. 7A-30, and the motion to dismiss the appeal for lack of substantial constitutional question filed by the Attorney General, the following order was entered and is hereby certified to the North Carolina Court of Appeals: the motion to dimiss the appeal is

"Allowed by order of the court in conference, this the 12th day of August 2004."

N.C. 2004

State v. Sinnott

358 N.C. 738, 602 S.E. 2d 678

Entered on the 23rd day of August

APPENDIX B

OPINION OF THE NORTH CAROLINA COURT OF APPEALS

NO. COA03-187

NO. COA03-187
NORTH CAROLINA COURT OF APPEALS

Filed: 16 March 2004

STATE OF NORTH CAROLINA

V. Wake County
NO. 02 CRS 9153 – 60

TAMMY KAY SINNOTT

and

DAVID MICHAEL SINNOTT

Appeal by defendants from judgments dated 31 May 2002 by Judge Evelyn W. Hill in Superior Court, Wake County. Heard in the court of Appeals 19 November 2003.

Attorney General Roy Cooper, by Assistant Attorney General Michael D. Youth, for the State.

Tammy K. Sinnott and David M. Sinnott Pro Se.

Tammy Kay Sinnott (Tammy Sinnott) and David Michael Sinnott (David Sinnott) (collectively defendants) were convicted on 29 May 2002 of attempting to evade and defeat the impostiton and payment of North Carolina Individual Income Tax for the calendar years 1993, 1994, 1995,and 1996, in

violation of N.C. Gen. Stat. §105-236 (7). In addition, David Sinnott was also convicted of failing to file a North Carolina Tax Return for calendar years 1997, 1998, 1999, and 2000, in violation of N.C. Gen. Stat. §105-236 (9). Defendants appeal.

The evidence presented by the State at trial tends to show that defendants have been residents of North Carolina since at least 1989. In calendar year 1993, defendants filed a joint state tax return on 24 January 1994, declaring their taxable income to be $39,883.00 with a tax liability of 2,579. Subsequently, defendants filed a amended 1993 return on 24 February 1997, declaring their taxable income to be zero. However, defendants listed no itemized deductions warranting a taxable income of zero. Essentially, defendants were claiming entitlement to a refund of the tax paid for 1993.

For calendar year 1994, defendants again filed a joint state tax return on 14 February 1995, declaring their taxable income to be $47,669 with a tax liability of 3,125. Similarly, on 23 February 1997, defendants filed an amended 1994 return declaring their taxable income to be zero even though the deductions and exemptions did not justify such a change. Again defendants were claiming a refund.

For calendar year 1995, defendants filed a joint state tax return on 15 February 1997 declaring their taxable income to be zero with no evidence of deductions and exemptions legitimizing their claim. Thus defendants were asking for a refund of the tax withheld in 1995.

For calendar year 1996, defendants filed a joint state tax return on 19 February 1997 declaring zero as their taxable income. They failed to submit evidence of deductions and exemptions entitling them to zero tax liability. Once again, defendants were asking for a refund of the tax withheld for the year 1996.

For calendar years 1997, 1998, 1999, and 2000, David Sinnott's gross income exceeded his federal and state exemption allowances and necessitated that he file both federal and state tax returns. David Sinnott failed to file a state tax return for these four years by the applicable deadlines.

Defendants first argue that the trial court erred by denying their identical pre-trial motions to dismiss the charges against them on constitutional grounds. Defendants made these motions pursuant to N.C. Gen. Stat. §15A-954, claiming that the criminal statutes which they were charged with violating N.C. Stat. §105-236 (7) and (9), were facially unconstitutional and unconstitutional as applied to each of them. Within this overall argument, defendants specifically make the following constitutional arguments: (1) that the state's claim that defendants' compensation for labor is taxable as income violates Article I, §1 of the North Carolina Constitution and the Bill of Rights because it is a tax upon the fruits of one's labor, (2) that a tax on one's labor is a capitation tax in violation of Article V, §1 of the North Carolina Constitution and Article I, §9 of the United States Constitution, (3) that the action commenced against defendants was in violation of Article IV, §13 of the North Carolina constitution because it was an action by the Department of Revenue rather than the State,

(4) that taxing compensation for labor violates the prohibition against slavery and involuntary servitude in Article I, §17 of the North Carolina Constitution and the Thirteenth Amendment to the United States Constitution, and (5) that the applicable statutes are vague and ambiguous and thus violate the due process clause in Article I, §19 of the North Carolina Constitution and the Fourteenth Amendment to the United States Constitution. For the reasons stated below we find these arguments to be without merit.

Defendants' first argument is meritless because it is well settled that it is constitutional to tax an individual's compensation for labor. This proposition was asserted in Lonsdale v. Commissioner, 661 F 2d 71 (5th cir. 1981) where the federal court of appeals summarized the appellants' arguments by stating the following:

> The first category of contentions may be summarized as that the United States Constitution forbids taxation of compensation received for personal services. This is so, appellants first argue, because the exchange of services for money is a zero-sum transaction, the value of the wages being exactly that of the labor exchanged for them and hence containing no element of profit. This contention is meritless. The constitution grants congress power to tax "incomes, from whatever source derived....." U.S. Const. Amend. XVI. Exercising this power, Congress has defined income as including compensation for services. 26 U.S.C. §61 (a) (1). Broadly speaking, that definition covers all "accessions to wealth." See Commissioners

v. Glenshaw Glass Co., 348 U.S. 426, 431, 75 S. Ct. 473, 477, 99 L.Ed. 483 (1955). This definition is clearly within the power to tax "incomes" granted by the sixteenth amendment.

Lonsdale, 661 F.2d. at 72.

Defendants in the case before us seem to be asserting an argument similar to the asserted by the appellants in Lonsdale. Lonsdale was followed in 1984, by a district court in the fourth circuit in the case of Scull v. United States, 585 F. Supp. 956, 963 (E.D. Va. 1984). The plaintiffs in Scull reported their taxable income as zero and were assessed a penalty. The plaintiffs reported this amount because they claimed "that money received as wages in not taxable as income because it constitutes an exchange of labor for compensation." Scull, 585 F. Supp. at 963. In response , the district court cited Lonsdale and a multitude of other cases and stated, "[t] his position is clearly frivolous and is asserted in an effort to avoid the payment of taxes. The Internal Revenue Code explicitly provides that gross income includes compensation for services. 26 U.S.C. §61 (a) (1). Furthermore, the position the plaintiffs assert has been rejected repeatedly by the courts as frivolous." Id.

Similarly, a bankruptcy court in the Fourth Circuit cited Lonsdale and stated, [w]ages are income; to argue otherwise is to make a meritless contention." In re Hall, 174 B.R. 210, 213 (bkrtcy. E.D. Va.1994).

Although these decisions are not binding on our court, we follow the reasoning asserted therein and hold that taxing compensation for labor is constitutional.

Defendants' second argument that taxing income is an unconstitutional capitation tax is also without merit. In Ficalora v. Commissioner, 751 F.2d. 85 (2d. Cir. 1984), cert. Denied, 471 U.S. 1005, 85 L. Ed. 2d.162 (1985) , the appellant argued that the income tax is a non-apportioned direct tax and that Congress does not have the constitutional power to impose such a tax. The Second Circuit disagreed and held that congress did possess the authority and cited Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 39 L. Ed. 759, reh'g 158 U.S. 601, 39 L. Ed. 1108 (1895) overruled on other grounds, South Carolina v. Baker, 485 U.S. 505, 524, 99 L. Ed. 2d. 592, 611 (1988). Ficalora 75 F. 2d. at 87. "' [T]he conclusion reached in the Pollock Case did not in any degree involve holding that income taxes generically and necessarily come within the class of direct taxes on property[.] '" Hale v. Iowa State Bd. Of Assessment and Review, 302 U.S. 95, 107, 82 L. Ed. 72, 80 (1937) (quoting Brushaber v. Union P. R. Co., 240 U.S. 1, 16-17, 60 L. Ed 493, 501 (1916) .

Similarly, in In re Becraft, 885 F.2d. 547 (9th Cir. 1989), the ninth circuit noted the "patent absurdity and frivolity" of an argument that a direct non-apportioned

income tax is not allowed. Becraft, 885 F 2d. at 548. the court upheld the validity of federal income tax laws stating that "[f]or over 75 years, the Supreme court and the lower federal courts have both implicity and explicitly recognized the Sixteenth Amendment's authorization" of such a tax. Id. By analogy, a state income tax does not run afoul of the prohibition against capitation taxes. Accordingly, this argument is without merit.

Defendants fail to make an argument in support of their contention within this assignment of error. Defendants merely state that this action was commenced by the Department of Revenue rather than by the state and thus violates Article IV, §13 of the North Carolina Constitution. Accordingly, Since no authority is cited and no reason or argument is stated, this contention is deemed abandoned pursuant to N.C.R. App. P. 28 (b) (6). We note that not only is no argument asserted, defendants' contention is a misstatement of what in fact occurred. Defendants assert that the Department of Revenue commenced the action by serving warrents, the fact remains that this action was instituted by the State of North Carolina as the caption indicates. Further, it is obvious that the State is the party opposing defendants in that an assistant attormey general prosecuted the case.

Defendants' fourth argument that paying income tax is a violation of the prohibition against involuntary servitude is

also without merit. Again, due to a lack of state case law, we turn to federal law for guidance. In Porth v. Brodrick, 214 F 2d. 925 (10th Cir. 1954), the Tenth Circuit affirmed the trial court's dismissal of the taxpayers suit. The taxpayer argued that congress' power to collect income taxes violated the prohibition against involuntary servitude. The court responded by stating, "[i]f the requirements of the tax laws were to be classed as servitude, they would not be the kind of involuntary servitude referred to in the Thirteenth Amendment." Porth, 214 F. 2d. at 926. Multiple other cases have come to this same conclusion and summarily dismissed this argument. See Ginter v. Southern, 611 F. 2d. 1226, 1229 (8th Cir. 1979), cert. Denied, 446 U.S. 967, 64 L. Ed. 2d 827 (1980); Kasey v. Commissioner, 457 F. 2d. 369, 370 (9th Cir), cert. Denied, 409 U.S. 869, 34 L. Ed. 2d 120 (1972); Abney v. Cambell, 206 F. 2d. 836, 841 (5th Cir. 1953), cert. Denied, 346 U.S. 924, 98 L. Ed. 417 (1954). We agree with the reasoning of these cases and find defendants' argument to be without merit.

Defendants' final contention within this assignment of error is that the statutes under which defendants were prosecuted are so vague and general s to be ambiguous. Defendants argue that N.C. Gen. Stat. §105-236 (7) fails to describe what conduct constitutes willfully, what constitutes an attempt to evade, and what amounts to aiding and abetting. Similarly, defendants argue that N.C. Stat. §105 – 236 (9) fails to state who is required to file, fails to specify to whom the statute applies, and fails

to explain what constitutes willfully.

"[T] he test for determing whether a statute is vague, as set forth by us in Vehaun, is whether the statute gives a 'person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may at act accordingly.'" State V. Blackmon, 130 N.C. App. 692, 700, 507 S.E. 2d. 42, 47, cedrt. Denied, 349 N.C. 531, 526 S.E. 2d. 470 (1998) (quoting State V. Elam, 302 N.C. 157, 161-62, 273 S.E. 2d. 661, 664-65 (1981)).

> Principles of "due process" require courts to declare a criminal statute unconstitutionally vague if the statute fails to clearly define what is prohibited. Grayned v. City of Rockford, 408 U.S. 33 L. Ed.2d.222, 92 S. Ct. 2294 (172) State v. Evans, 73 N.C. App. 214, 326 S.E. 2d. 303 (1985). A Statute is void for vagueness" if it forbids or requires doing an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application. Coates v. Cincinatti, 402 U.S. 611, 29 L. Ed.2d 214, 91 S. Ct. 1686 (1971); In re Burrus, 275 N.C. 517, 169 S.E. 2d 647, 91 S Ct. 1976 (1971). Only a necessary, mathematical precision is not required. Grayned v. City of Rockford, supra; State v. Martin, 7 N.C. App. 532, 173 S.E. 2d 47 (1970).

State v. Worthington, 89 N.C. App. 88, 89, S.E. 2d 317, 318 (1988)

The subsections of N.C. Gen. Stat. §105-236 which are at issue are as follows:

> (7)Attempt to Evade or Defeat Tax. – Any person who willfully attempts, or any person who aids or abets any person to attempt in any manner to evade or defeat a tax or its payment, shall, in addition to other penalties provided by law, be guilty of a Class H felony.
>
> (9)Willful Failure to File Return, Supply Information, or Pay Tax.
> Any person required to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay the tax, make the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of six years after the date of the violation.

N.C. Gen. Stat. §105-236 (7) and (9) (2003).

Regarding subsection (7), defendants take issue with the term "willfully" and with what conduct constitutes an attempt to evade and defeat a tax. Although this language has not been addressed specifically in N.C. Gen. Stat. §105-236 (7) and (9), a challenge was mounted against a statute containing similar language in another context. N.C. Gen. Stat. 14-202.1 (2003) punishes criminally one

who willfully take or attempts to take……indecent liberties with a child. The appellants in Blackmon asserted a challenge based on the claim the N.C. Gen. Stat. §14-202.1 was unconstitutionally void for vagueness. This court upheld this statute despite the challenge. Blackmon, 130 N.C. App. At 699-700, 507 S.E. 2d at 47. Likewise, we hold that the statute in the case before us withstands the constitutional vagueness challenge.

Defendants also contend that "aids and abets" is unconstitutionally vague. However, defendants cite no authority and make no argument for this proposition. Accordingly, this argument is deemed abandoned pursuant to N.C.R. App. P. 28 (b) (6).

With respect to subsection (9), defendants primarily argue that the statute does not specify to whom it applies. The subsection refers to "[a] ny person required to pay any tax, to make a return…." However, this jprovision is merely one which provides for penalties for those who fail to comply. One must look to a different provision within the Individual Income Tax Act (N.C. Gen. Stat. §105-133 et seq.) to determine which individuals are required to file returns. The applicable provisions is N.C. Gen. Stat. 105-152 (2003). Subsection (a) is entitled "Who Must File," and it delineates exactly who must file an income tax return. Thus, N.C. Gen. Stat. §105- 236 (9) does not fail for vagueness simply because it fails to reference which individuals are required to file income tax returns.

Defendants also take issue with the term "willfully" contained in subsection (9). Again, the analysis from Blackmon is instructive and we hold

that the statute in the case before us withstands the constitutional vagueness challenge.

Defendants next argue that the trial court erred by denying their motion to dismiss at the close of the State's evidence. "Upon defendants motion for dismissal, the question for the court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense. If so, the motion is properly denied." State v. Powell, 299 N.C. 95, 98, 261 S.E. 2d 114, 117 (1980). "Substantial evidence is that amount of 'relevant evidence that a reasonable that a reasonable mind might accept as adequate to support a conclusion.'" State v. Armstrong, 345 N.C. 161, 165 478 S.E. 2d 194, 196 (1966) (quoting State V. Vick, 341 N.C. 569, 538-84, 461 S.E. 2d 655, 663 (1995)). "The evidence must be viewed in the light most favorable to the State, and the state must receive every reasonable inference to be drawn from the evidence. Any Contradictions or discrepancies arising from the evidence are properly left for the jury to resolve and do not warrant dismissal." State v. King, 343 N.C. 29, 36, 468 S.E. 2d 232, 237 (1996) (citations omitted).

The evidence at trial showed that in 1993 and 1994, defendants filed returns indication tax liability and then subsequently filed amended returns which listed their taxable as zero. However, these amended returns failed to include exemptions and deductions which warranted a conclusison that no taxes were owed. Similarly, in 1995 and 1996, defendants filed returns indicating they owed no taxes without deductions and exemptions to justify their claim. In addition, Nancy Yokely (Yokely), a

special agent with the Department of Revenue, testified as to a conversation she had with Tammy Sinnott regarding the payment of taxes. Yokely testified the Tammy Sinnott claimed to not owe taxes because and her husband had no source of income and the income tax was a duty tax. Tammy Sinnott further claimed that she would not file any returns until she had proof that she had to file. This evidence is sufficient to establish that defendants willfully attempted to evade or defeat a tax or its payment in violation of subsection (7).

In addition, the evidence tended to show that David Sinnott failed to file an income tax return for years 1997, 1998. 199, and 2000 despite the fact that his gross income exceeded his federal and state exemption allowances and necessitated that he file a return in each of those years. This evidence, coupled with the testimony by Yokely, is sufficient to establish that David Sinnott willfully failed to file income tax returns in violation of subsection (9). Accordingly, the trial court did not err in failing to dismiss the charges. This assignment of error is overruled.

No error.
Judges HUNTER and GEER Concur

APPENDIX C

Decision of the N.C. Superior Court

The Petitioners were found guilty at trial.

APPENDIX D

Motion to Dismiss by defendents

STATE OF NORTH CAROLINA
IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION
COUNTY OF WAKE
FILE NO. 02CR9157-60

N.C. Department of Revenue)
Plaintiff)
v.)
Motiton to Dismiss)
)
David M. Sinnott)
Defendant)

Defendant moves pursuant to N.C.G.S. Section 15A-954 that the court dismiss the charges on the following grounds:

1. That the criminal statute alleged to have been violated is unconstitutional on it's face in that it violates the 14th amendment to the United States Constitution.

2. That the criminal statute alleged to have been violated is unconstitutional as applied to the defendant, in that the statute violates the due process clause of the 14th Amendment of the United States Constitution.

3. The allegation that defendant is a person liable and therefore a person required to file is unconstitutional as applied to defendant in that it works to violate the United States Constitution Article I Section 9. It also works to violate the North Carolina Constitution Article 5 Section 1.

4. The allegation that defendants compensation is income works to violate the 16th Amendment of the United States Constitution.

5. That the allegation that defendant is a person liable therefore required to file is unconstitutional as applied to the defendant in that it would violate the Constitutions under the following heading.

    a. N.C. Constitution Section 1. The Equality and rights of persons. United States Constitution Bill of Rights.
    b. N.C. Constitution Section 8. Representation and Taxation.
    c. N.C. Constitution Section 17. Slavery and involutary servitude. United States Constitution Amendment XIII.

    d. N.C. Constitution Article IV Section 13. Forms of action

e. N.C. Constitution Section 18. District Attorneys and Prosecutorial Districts.
f. N.C. Constitution Section 5. Acts levying taxes to state objects.

This the 28th day of May, 2002

_____

David M. Sinnott, Defendant
Tammy K. Sinnott, Defendant

UNITED STATES CONSTITUTION
AMENDMENT XIV Nationalizing tbe bill of rights.

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

1. N.C.G.S. 105-236 (7) Fails to describe what conduct constitutes willfully attempting to evade or defeat a tax or the payment of the tax. Nor does it describe what constitutes aiding and abetting. The statute is ambigious and vague.

> **N.C.G.S. 105-236 (7)Attempt to Evade or Defeat Tax**. – Any person who willfully attempts, or any person who aids or abets any person to attempt in any manner to evade or defeat a tax or its payment, shall, in addition to other penalties provided by law, be guilty of a Class H felony.

2. N.C.G.S. 105-236 (9) Fails to state who is required to file, make a return, or to keep records. It fails to provide the statute which would in fact establish that defendant was one of these "persons" liable and therefore required to file.

> **(9) Willful Failure to File Return, Supply Information, or Pay Tax**.
>
> Any person required to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay the tax,

make the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of six years after the date of the violation

Neither criminal statute decribes what acts are considered to be Willful.

Under the due process clause of the constitution, no individual can be forced to speculate what conduct is prohibited.

As stated in:

U.S. v. Leo J. Dorey, Jr., U.S. Ct. of Appeals, 9th Cir. 82-1322

"The due process clause requires that a statute, which is used as a basis of a criminal charge, give fair warning of conduct which is prohibited so that each person can conform his conduct to requirements of the law. Fundamental principles of due process mandates that no individual be forced to speculate whether his conduct is prohibited."

16A Am Jur 2d, Constitutional Law, §818

Definiteness or Vagueness of Laws, Regulations and Orders states:

"It is a general principle of statutory law that a statute must be definite to be valid."

U.S. v Bishop 412 U.S. 346 at 361

"The requirement of an offense committed willfully is not met, therefore, if a taxpayer has relied in good faith upon a prior decision of this Court."

Cheek v. U.S., 111 S. Ct. 604

"If the defendant had a subjective good faith belief, no matter how unreasonable, that he was not required to file a tax return, the government cannot establish the the defendant acted willfully.

Futher, Defendant has repeatedly asked the Department of Revenue where in the General Statutes one finds the law that creates the liability that would require a person to file.

Defendant has a right to not only to inquire into the legalness of demands made upon me by the government, but the right to an answer of such laws. Department of Revenue has not answered those questions but has remained silent.

Carmine v. Bowden 64 atlantic 932

"Silence is a species of conduct, and constitutes an implied representation of the existence of the state of facts in question,

and the estoppel is accordingly a species of estoppel by misrepresntation.

Johnson v Duke, 180 Md. 434
"The Constitution of the State is a higher authority than any act or law of any officer or body assuming to act under it. And in case of conflict the Constitution must govern, and the act or law in conflict with it must be held to have no legal validity.

United States Constitution Bill of Right & NORTH CAROLINA CONSTITUTION ARTICLE I

SECTION 1. The Equality and rights of persons.
We hold it to be Self-Evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

The claim that defendants compensation for labor is income, would be a direct tax on the right to work in a lawful occupation, and a direct tax on the right to the enjoyment of the fruits of their own labor

Spreckles Sugar Ref. Co. v McClain, 192 U.S. 397
"Keeping in mind the well-settled rule that the citizen is exempt from taxation unless the same is imposed by clear and unequivocal language, and

that where the construction of tax law is doubtful, the doubt is to be resolved in favor of those upon whom the tax is sought to be laid."

The Antelope, 23 U.S. 66, (pg. 120)
"...Every man has a natural right to the fruits of his own labor, as generally admitted; and no other person can rightfully deprive him of those fruits, or appropriate them against his will..."

Sectiton 8. Representation and Taxation.
The people of the State shall not be taxed or made subject to the payment of any impost or duty without the consent of themselves or their representatives in the General Assembly, freely given.

After researching the records I have found no act of the General Assembly enacting a direct tax on the right to the fruits of ones labor.

U.S. Constitution AMENDMENT XIII Prohibition Of Slavery

N.C. Section 17. Slavery and involutary servitude

Section 1

Slavery is forever prohibited. Involutary servitude, exceptas a punishment for crime whereof the parties have been adjudged guilty, is forever prohibited.

The demand that defendant pay a tax on the fruits of their labor, makes defendant an involuntary servant to pay the state for the right to work.

ARTICLE IV

Section 13. Forms of action; rules of procedure.

(1) Forms of action……Every Action prosecuted by the people of the State as a party against a person charged with a public offense, for the punishment thereof, shall be termed a criminal action.

This action is an action by the Department of Revenue, it is not an act being prosecuted by the people of the State and it is not a public offense, nor does it appear in the N.C. Criminal Statute

Section 18. District Attorneys and Prosecutorial Districts.

(1) District Attorneys. The District Attorney shall advise the officers of justice in his district, be responsible for the prosectution on behalf of the State of all criminal action in the Supertior courts of his district, perform such duties related to appeals therefrom as the Attorney General may require, and perform such other duties as the General Assembly may prescribe..

The District Attorneys office made it clear that the state wasn't prosecuting this case and that they just supply the Department of Revenue court time.

ARTICLE I

Section 9 Restrictions

No capitation or other direct, tax shall be laid, unless in proportion to the Census or Enumeration herein before directed to be taken.

Article V. Finance
Section 1. No capitation tax to be levied.
No poll or captiation tax shall be levied by the General Assembly, or by any county, city or town, or other taxing unity.

A Tax on the right to the fruits of ones labor, is in its nature a Capitation Tax.

Peck v Lowe, 247 US. 165 (pg. 170)

"Neither can the tax be sustained on the [natural] person, measured by income. Such a tax would be, by nature, a capitation rather than an excise. " (emphasis added).
"The 16th Amendment does not extend the power of taxation to new or excepted subjects..."

Section 5. Acts levying taxes to state objects.
Every act of the General Assembly levying a tax shall state the special object to which it is to be applied, and it shall be applied to no other purpose

Income in its proper and ordinary meaning is gain, derived from capital. One does not receive gain from compensation for labor. The Department of Revenue is seeking to tax that which is not within the meaning of the income tax.

Doyle v Mitchell Brothers, 247 U.S. 330
"Whatever difficulty there may be about a precise and scientific definition of income, it imports something entirely distinct from principal or capital either as a subject of

taxation or as a measure of the tax; conveying rather the idea of gain or increase arising from corporate activities... We must reject in this case... the broad contention submitted in behalf of the government that all receipts, everything that comes in – are income within the proper definition of the term 'gross income'..."

Edwards v. Keith, 231 Fed Rep. 110
"The phrastology of form 1040 is somewhat obsure..But it matters little; the statute and the statute alone determines what is income to be taxed. It taxes income derived from different sources; one does not derive income by rendering services and charging for them."

AMENDMENT XVI. Income Tax
The Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

U.S.C.A. Const. Am. 16

"An unapportioned direct tax on anything which is not income would be unconstitutional."
"There must be gain before there is "income" within the 16th Amendment."

Conner v. United States, 303 F. Supp 1187 (1969) pg. 1191 (pgs. 1188, to 1191),
"The government contends that the broad language of IRC 61(a) manifests an intent by congress to execise the full extent of it's taxing power....No attempt by congress has ever been made to define with specificity the term 'income' as it is used in the 16th Amendment. In earlier taxing acts, it instead provided that gross income includes gains, profits, and income from varous sources "or from any source whatsoever," leaving to administrative and judicial determination the inclusion or exclusion of certain items...if there is no gain, there is no income...Congress has taxed income, not compensation."

[2] Whatever may constitute income, therefore, must have the essential feature of gain to the recipient. This was true when the 16th amendment became effective, it was true at the time of the decision in Eisner v. McComber (supra), it was true under section 22(a) of the Internal Revenue Code of 1939, and it is true under section 61(a) of the internal Revenue Code of 1954. If there is no gain, there is no income."
"..Congress has taxed income not compensation"

This the 28th day of May, 2002

_____
David Sinnott, Affiant